

San Francisco Bay Conservation and Development Commission

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Salt River Construction Corporation
c/o Richard Moseley, Registered Agent
5643 Paradise Drive, Unit 8
Corte Madera, CA 94925

Respondent

COMMISSION
CEASE AND DESIST AND CIVIL PENALTY
ORDER NO. CCD2019.001.00

Effective Date: June __, 2019

TO SALT RIVER CONSTRUCTION CORPORATION:

I. CEASE AND DESIST ORDER

Pursuant to California Government Code Section 66638, the Salt River Construction Corporation ("SRCC"), all of its agents and employees, and any other persons acting on behalf of or in concert with it (collectively "SRCC" or "Respondent"), are hereby ordered to:

- A. Cease and desist from violating the McAteer-Petris Act ("MPA").
- B. Fully comply with the requirements of Sections III, IV, and V of this Cease and Desist and Civil Penalty Order.

II. FINDINGS

This Order is based on the findings set forth below. The administrative record in support of these findings includes the documents cited herein and all additional documents cited in the Index of Administrative Record attached hereto. The violations occurred at two different locations and during two separate time periods.

A. On November 25, 2017, a San Francisco Baykeeper patrol boat witnessed a barge near Schoonmaker Marina in Richardson's Bay in Marin County being propelled by an excavator bucket. On December 1, 2017, Baykeeper notified BCDC by email about the activity that was observed, providing photographs and videos of the event. The photographs and videos showed the dredging operator submerging the excavator bucket into the water to the Bay floor, dragging the bucket through the sediment on the Bay floor to propel the barge forward, and then removing this sediment material from the Bay with the excavator bucket. The extracted material was then released back into the Bay from the excavator bucket. This extraction and placement of fill was not authorized by the Commission. After reviewing the material submitted by Baykeeper, BCDC staff identified the equipment as owned and/or operated by SRCC.

B. On March 27, 2018, staff received an email from a senior project manager at the U.S. Army Corps of Engineers regarding the unlawful storage of two barges in Belmont Slough off the coast of Foster City. The email described two SRCC barges that had been moored in the slough since approximately February 1, 2018, following the completion of SRCC's dredging operations for a Foster City dredging project. On March 27, 2018, after being contacted by the managing engineer for the Foster City dredging project, SRCC stated that it would move the barges from the site. A photograph taken on April 11, 2018, confirmed that the barges had been removed from their location in Belmont Slough near the Foster City dredging project site.

C. After SRCC was contacted about these violations, on June 16, 2018, the Executive Director issued a Violation Report/Complaint for Civil Penalties. On August 31, 2018, Respondent submitted their Statements of Defense and accompanying supporting documents. After this submittal, staff engaged in discussions with SRCC regarding the violation, including at a meeting attended by both SRCC and representatives of Foster City, and proposed conditions to be incorporated in a stipulated order to resolve the matter, as well as proposed penalties. As a result of those discussions, staff agreed to withdraw one of the alleged violations and the proposed penalty associated with that violation, which concerned alleged dredging beyond the authorized limits and depths.

D. On January 24, 2019, staff sent SRCC a draft copy of a proposed Commission Cease and Desist and Civil Penalty Order, requesting that SRCC review the draft document and provide input.

E. On February 21, 2019, the Enforcement Committee held a noticed public hearing to consider the Executive Director's recommended enforcement decision, including a proposed cease and desist and civil penalty order, the evidence and arguments submitted by BCDC staff and Respondent, respectively, and any public comments pertaining to this matter. The Respondent did not appear present their position at the hearing, and the Enforcement Committee adopted the Recommended Enforcement Decision.

F. On March 7, 2019, at a noticed public meeting to consider the Enforcement Committee's recommended enforcement decision, following a request by the Respondent, the Commission remanded the matter to the Enforcement Committee to allow the Respondent to appear and present Respondent's position.

G. On May 16, 2019, the Enforcement Committee held a second noticed public hearing to consider the Executive Director's recommended enforcement decision, including a proposed cease and desist and civil penalty order, the evidence and arguments submitted by BCDC staff and Respondent, respectively, and any public comments pertaining to this matter. The Enforcement Committee adopted the Recommended Enforcement Decision.

H. On ____, 2019, at a noticed public meeting, the Commission considered the Enforcement Committee's recommended enforcement decision, including a proposed cease and desist and civil penalty order, the evidence in the administrative record, and the arguments and comments presented by BCDC staff and Respondents. The Commission adopted the Enforcement Committee's recommended enforcement decision, including this Cease and Desist and Civil Penalty Order ("Order"), without any changes or modifications.

III. CONDITIONS

A. On and after the Effective Date of this Order, Respondent shall cease and desist from all activity in violation of the McAteer-Petris Act.

B. **Cease From Propelling Vessels With Excavator Bucket.** On and after the Effective Date of this Order, Respondent shall cease and desist from propelling scows, barges, or any other vessels operated by SRCC designed to carry dredged sediment or other material, by way of pulling or pushing with an excavator bucket along the San Francisco Bay floor, or in any location under the jurisdiction of the Commission in violation of the McAteer-Petris Act. Notwithstanding the above, Respondent may maneuver its vessels and or equipment by use of an excavator bucket so long as the excavator bucket does not physically contact any sediment or other material existing on the San Francisco Bay floor.

- i. Movement by excavator bucket in order to reposition SRCC vessels may include incidental contact with the Bay Floor so long as such contact with the Bay Floor occurs within the "dredge footprint" at project sites associated with dredging contracts entered into pursuant to a Commission permit. Such movement pursuant to this paragraph shall never be used for general navigation purposes.
- ii. At no time shall movement of a SRCC vessel by pushing or pulling with an excavator bucket along the Bay floor be permitted outside a dredging footprint as specified above.

C. **Cease From Mooring Vessels at Unauthorized Locations.** On and after the Effective Date of this Order, SRCC shall ensure scows, barges, or any other vessels or equipment owned, operated, or used by Salt River Construction Corporation are moored in an authorized location as specified below:

- i. **Authorized Locations During Active Dredging Operations.**
 1. If SRCC is under contract to perform dredging operations anywhere in the Commission's jurisdiction, all vessels and equipment must be

moored within the dredging footprint associated with the project, or in a location authorized in writing by the Commission staff, to ensure adequate protection of the marine environment. Mooring in these locations will be limited to the authorized timeframe as authorized in each episode approval pursuant to a Commission permit, and within limited mobilization or demobilization periods (two weeks prior to or after a dredging episode is complete).

2. Any mooring authorized pursuant to the above paragraph shall be described in an attachment, or otherwise noted, in each Dredge Operation Plan submitted by every permittee on behalf of Respondent. Such description shall list the vessel/s and or equipment necessary to be moored, the dimensions of each vessel and or piece of equipment, including the equipment type (e.g. "scow", "barge", "tug" etc.) and the general habitat type where the vessel and/or equipment shall be moored. SRCC will provide a corresponding map of the subject property describing the precise location vessels and/or equipment will be moored.
3. SRCC agrees to seek authorization from the Commission's permittee to moor its equipment on the permittee's property either before or after dredging operations begin at a project site, if necessary. If it is necessary to moor vessels and or equipment on property not owned by a permittee associated with a project, as part of the Dredge Operation Plan, SRCC will ensure that permission has been obtained from the property owners to moor SRCC equipment and such permission shall be confirmed in writing. SRCC will include with its project-specific Dredge Operation Plan a U.S. Coast Guard local notice to mariners, and, if the location is not in a designated general anchorage, SRCC will apply to the U.S. Coast Guard for an appropriate anchorage authorization.

ii. Authorized Locations During Non-Active Periods:

1. At no time shall SRCC moor a vessel or equipment in marsh, or other sensitive habitats, such as eelgrass beds, without written approval from the Commission's staff.
2. During all times that SRCC is not operating its vessels and/or equipment for use associated with an ongoing dredging project, all vessels and/or equipment owned, operated, or used by SRCC for that project must be moored at an equipment yard, an approved marina, or similar location, where SRCC is authorized to

moor its vessels and/or equipment for an extended period of time.

3. If SRCC does not have an authorized location to moor its vessels and equipment as specified above, SRCC shall make good faith efforts to obtain authorization within six months of this Order, such as pursuing permits or approvals from BCDC and any other agency having jurisdiction over the mooring activity to moor its vessels and equipment on its property in Marin County.

D. **Reporting Requirements.** On and after the Effective Date of this Order, SRCC shall ensure any information that SRCC generates or produces pursuant to a BCDC permit requirement shall be submitted by SRCC to the permittee, who shall in turn submit it to BCDC. At no time shall the information submitted by SRCC to BCDC pursuant to this paragraph be accepted as having fulfilled a permittee's reporting requirements unless it was specifically requested by the Commission or its staff, or a permittee has designated Respondent to act as a legally authorized representative.

- i. For any information submitted by Respondent pursuant to the paragraph above, Respondent agrees to certify that the information is "correct and accurate to the best of their knowledge." If at any time SRCC determines that any information previously submitted to either a permittee or the Commission on behalf of SRCC may be inaccurate or incorrect, SRCC agrees to notify the Commission or BCDC staff immediately of the discrepancy.

E. **Mandatory Use Of Grizzly and Legal Upland Disposal of Non-Sediment Dredged Material:** On and after the Effective Date of this Order, Respondent shall employ a "grizzly," a screening device that removes debris from dredged material, in all of its dredging projects prior to disposal of the sediment. SRCC shall properly dispose of all debris captured by the grizzly at an upland debris disposal facility. Should the "grizzly" used pursuant to this condition become non-operational during active dredging operations, or in any way cannot be used due to mechanical failures or the like, Respondent agrees to cease any and all dredging activity until SRCC can reinstate dredging with an operational "grizzly".

IV. CIVIL PENALTY ORDER

Pursuant to Government Code Sections 66641.5(e) and 66641.9, the Commission hereby assesses and orders SRCC to pay a civil penalty of \$28,500. This penalty payment shall constitute Respondent's full and complete satisfaction of its liability for civil penalties for the alleged violation, through the date of this Order.

- A. **Assessed Penalty.** The total civil penalty of \$28,500 includes the following:

1. A penalty of \$2000 for the unpermitted activities in Richardson's Bay.
This is a penalty is assessed for the placing of fill and extracting materials that was observed and documented on November 25, 2017.
2. A penalty of \$250 per day for the 53 days, starting February 3, 2018, and running through March 27, 2018, that Barge #1 was moored in Belmont Slough without authorization.
3. A penalty of \$250 per day for the 53 days, starting February 3, 2018, and running through March 27, 2018, that Barge #2 was moored in Belmont Slough without authorization.

- B. Justification for the Penalty.** The Commission finds that the amount of the penalty is reasonable and appropriate, given the nature, extent and gravity of the violations. Government Code Section 66641.5(e) provides that the Commission may administratively impose civil liability for any violation of the McAteer-Petris Act or a BCDC permit in an amount which shall be not less than ten dollars (\$10), nor more than two thousand dollars (\$2000), for each day in which the violation occurs or persists. Government Code Section 66641.9(a) provides that in determining the amount of administrative civil liability, the Commission shall take into consideration the nature, circumstance, extent, and gravity of the violation or violations, whether the violation is susceptible to removal or resolution, the cost to the state in pursuing the enforcement action, and with respect to the violator, the ability to pay, the effect on ability to continue in business, any voluntary removal or resolution efforts undertaken, any prior history of violations, the degree of culpability, economic savings, if any, resulting from the violation, and such other matters as justice may require.

SRCC had previously been instructed by staff not to engage in the activities that were used in Richardson's Bay to propel the SRCC barge. In addition, Commission staff had also previously advised SRCC not to moor its barges for extended periods of time in the Bay, and on at least three prior occasions, BCDC had opened investigations against SRCC for the unauthorized mooring or storage of barges and barge equipment. BCDC also previously pursued an enforcement action related to the unlawful disposal of dredging material as part of an operation conducted by SRCC in Marin County. This ended in a settlement, with no penalties assessed, in which SRCC committed to institute measures including conducting personnel training. This prior history of violations was considered in the calculation of the civil penalty. The sensitive nature of the site where SRCC moored its vessels and the extent of the activity was also considered in establishing the \$250 per-day penalty for the mooring activities in Belmont Slough.

With respect to Respondent, the amount of the civil penalty also takes into account its voluntary resolution of the matter, as well as the degree of culpability.

- C. Penalty Payments.** Pursuant to Government Code Section 66647, SRCC shall remit payments to the Commission, by cashier's checks payable to the San Francisco Bay Conservation and Development Commission – Bay Fill Clean-up

and Abatement Fund as follows: (1) within 30 days of the Effective Date of this Order, a payment of \$14,250; and (2) within seven months of the Effective Date of this order, a payment of \$14,250.

V. TERMS

A. Under Government Code Section 66641, any person who intentionally or negligently violates any cease and desist order issued by the Commission may be liable civilly in the sum of up to \$6,000 for each day in which such violations persist. In addition, upon the failure of any person to comply with any cease and desist order issued by the Commission and upon the request of the Commission, the Attorney General of the State of California may petition the superior court for the issuance of a preliminary or permanent injunction, or both, restraining the person or persons from continuing any activity in violation of the cease and desist order.

B. This Order does not affect any duties, rights, or obligations under private agreements or under regulations of other public bodies.

C. SRCC must conform strictly to this Order.

D. This Order does not constitute a recognition of property rights.

E. This Order is effective upon issuance thereof.

VI. OPPORTUNITY FOR JUDICIAL REVIEW

Under Government Code Sections 66639 and 66641.7(a), within thirty days after service of a copy of a cease and desist order and civil penalty order issued by the Commission, Respondent may file with the superior court a petition of writ of mandate for review of the order pursuant to Section 1094.5 of the Code of Civil Procedure.

FOR THE SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION

Dated: _____

LAWRENCE J. GOLDZBAND
Executive Director
San Francisco Bay Conservation and
Development Commission